

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUCIANO F. PAONE,	:	
	:	
Plaintiff,	:	<u>ORDER</u>
	:	
- against -	:	15 Civ. 647 (BMC)(GRB)
	:	
QUALCOMM, INC.,	:	
	:	
Defendant.	:	
-----	X	
COGAN, District Judge.		

This case is before me on plaintiff Luciano F. Paone’s objections to the Report and Recommendation of Magistrate Judge Gary R. Brown, dated December 16, 2016, in which Judge Brown recommended that this Court reject the claim construction plaintiff has proffered and adopt defendant Qualcomm, Inc.’s claim construction, which corresponds to the claim construction that Judge Spatt had previously adopted in Paone v. Microsoft Corp., 881 F. Supp. 2d 386 (E.D.N.Y. 2012).¹ Plaintiff objected to Judge Brown’s Recommendation, and the parties submitted briefing related to that, as well. Familiarity with the Report and Recommendation, the facts, and the parties’ briefing is assumed. After considering the record before me, I agree with Judge Brown’s Report and Recommendation, and the Court adopts the claim construction set forth therein.

Pursuant to 28 U.S.C. § 636, a district court judge can “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C.

¹ Judge Brown in the instant action and Judge Spatt in the Microsoft action had to construe the same phrase: “repeating the steps of modifying the at least one object key.”

§ 636(b)(1). If objections are made to a recommendation, the court employs a *de novo* standard of review. See id.

Plaintiff's objections to the Report and Recommendation are essentially the same arguments that he raised in his claim construction briefing and during the Markman hearing in support of his position that Qualcomm and Judge Spatt's construction are incorrect. Specifically, plaintiff argues that the recommended claim construction (1) "is inconsistent with the plain language of the claims," (2) "requires rewriting the claims to exclude" antecedent language, (3) "limit[s] the claims to a feature of one embodiment."

After review of the materials under the applicable *de novo* standard, the Court overrules Paone's objections and adopts the Report and Recommendation in full. Judge Brown conducted a careful review of the parties' written submissions, employed the proper legal standards, accurately recited the facts, and reasonably applied the law to those facts. The Court adopts Judge Brown's claim construction on the phrase "repeating the steps of modifying the at least one object key" for all of the legal reasons contained in the Report and Recommendation.

SO ORDERED.

U.S.D.J.

Dated: Brooklyn, New York
March 27, 2017